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| APPLICATION NO.                        | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/731,509                             | 12/07/2000  | Thomas Schaeck       | DE919990082         | 1249             |
| 46369                                  | 7590        | 02/17/2006           | EXAMINER            |                  |
| HESLIN ROTHENBERG FARLEY & MESITI P.C. |             |                      | COLIN, CARL G       |                  |
| 5 COLUMBIA CIRCLE                      |             |                      | ART UNIT            |                  |
| ALBANY, NY 12203                       |             |                      | PAPER NUMBER        |                  |
|  |             |                      | 2136                |                  |
| DATE MAILED: 02/17/2006                |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|   |                               |                                |  |
|---|-------------------------------|--------------------------------|--|
| <b>Advisory Action</b><br><b>Before the Filing of an Appeal Brief</b> | Application No.<br>09/731,509 | Applicant(s)<br>SCHAECK ET AL. |  |
|   | Examiner<br>Carl Colin        | Art Unit<br>2136               |  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 16-47.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.


#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Applicant's remarks filed on 1/27/2006 are not persuasive. Regarding claim 16 (that applicant mistakenly refers as claim 1), Applicant's arguments of Sloan teaches away from the claimed invention is misleading. Applicant states (pages 2-3) that Sloan teaches away from card holder involvement in verification and Findley teaches card holder involvement verification and concluding they are opposite teaching. It is noted that applicant's claimed language is claiming a condition for using either involvement of a card holder in performing verification or not using involvement of a card holder verification. Examiner respectfully disagrees that the reference teaches away from each other or from the claimed invention. On page 4 of the remarks, applicant then states that even ignoring these above remarks, Sloan does not overcome the deficiencies of Findley because Sloan fails to teach a conditional card holder verification procedure in which intervention is suppressed if there is a trusted association. As indicated in the office action, this limitation is disclosed in Findley. Applicant further states that in Sloan the device does not ask the user for authentication information if no password is found as claimed. This limitation is not claimed by Applicant. Applicant argues that trusted association includes "checking a device ID against that stored on the card" which is not claimed either. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). With regard to the claimed language of trusted association, Examiner disagrees with applicant that one of ordinary skill in the art would not interpret an expiration date of an access card as a presence of a trusted association as interpreted by Examiner in addition to other interpretations mentioned in the Office action on pages 2-3. Examiner respectfully disagrees with Applicant stating that in Creekmore "comparing the identification card with one or more predetermined digits for performing approval of a transaction" is not checking for trusted association (Creekmore, column 6, lines 19-67). Therefore the evidence of "when checking indicates no trusted association then involving the card holder to perform verification" presented by Examiner is correct. In addition, applicant mentions that no conditional card holder involvement in verification can be found in Beuk et al. See figure 2 with appropriate detailed explanation in Beuk et al. Other independent claims contain similar limitations as found in claim 16. For at least the reasons stated above and in the final office action claims 16-47 are not in condition of allowance.

  
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